

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Steve Lester,

Plaintiff,

v.

Perry Correctional Inst.;  
In Employee L.T. Church;  
In Employee D.H.O. Tuner a/k/a  
Truner,

Defendants.

C/A No. 4:11-2994-TMC-TER

**OPINION & ORDER**

Plaintiff, Steve Lester ("Plaintiff"), a state prisoner proceeding *pro se*, brings this action under 42 U.S.C. § 1983 alleging that the Defendants violated his constitutional right to due process and the Eighth Amendment and seeks damages from Defendants, Church and Tuner. Plaintiff, an inmate at Perry Correctional Institution, filed this action *in forma pauperis* under 28 U.S.C. § 1915.

In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(d), D.S.C., all pre-trial proceedings were referred to a Magistrate Judge. On March 8, 2012, Magistrate Judge Thomas E. Rogers, III issued a Report and Recommendation ("Report") recommending that the court dismiss the Defendant, Perry Correctional Institution, from this case without prejudice. (Dkt. # 21). The Magistrate Judge provided Plaintiff a notice advising him of his right to file objections to the Report. (Dkt. # 21 at 5). Plaintiff filed objections to the Magistrate Judge's Report on March 19, 2012. (Dkt. # 26).

**Standard of Review**

The Magistrate Judge makes only a recommendation to the court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The court is obligated to conduct a de novo review of every portion of the Magistrate Judge's report to which objections have been filed. *Id.* However, the court need not conduct a de novo review when a party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of a timely filed, specific objection, the Magistrate Judge's conclusions are reviewed only for clear error. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

### **Discussion**

The Magistrate Judge recommended that the court dismiss Defendant Perry Correctional Institution from this case without prejudice. (Report at 4). As noted by the Magistrate Judge, Perry Correctional Institution is a department, group of buildings, or a facility. Thus, it is not considered a person subject to suit under 42 U.S.C. § 1983, and, therefore, Plaintiff failed to state a claim on which relief may be granted against it.

As noted above, Plaintiff filed objections to the Report which the court has carefully reviewed. However, the Plaintiff's objections provide no basis for this court to

deviate from the Magistrate Judge's recommended disposition. The objections are non-specific, unrelated to the dispositive portions of the Report or merely restate Plaintiff's claims.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court finds Plaintiff's objections are without merit. Accordingly, the court adopts the Report and incorporates it herein. It is therefore **ORDERED** that only the Defendant, Perry Correctional Institution, is **DISMISSED** without prejudice.<sup>1</sup> See *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); and 28 U.S.C. § 1915A.

**IT IS SO ORDERED.**

s/Timothy M. Cain  
United States District Judge

March 22, 2012  
Greenville, South Carolina

### **NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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<sup>1</sup> The Magistrate Judge authorized service of process against the Defendants, Church and Tuner. Therefore, this action continues against those Defendants. (Report at 4 N. 2).